

INFORMATION BULLETIN #11

SALES TAX

DECEMBER, 2002

(Replaces Bulletin #11 dated May 1994)

DISCLAIMER: Information bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information, which is not consistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Application of Sales Tax to Restaurant Owners Including Fast Food Operations and Caterers

REFERENCES: IC 6-2.5-5-20, 45 IAC 2.5-5-4, 45 IAC 2.5-5-43, 45 IAC 2.5-5-44, 45 IAC 2.5-5-45

I. General Information

All sales of tangible personal property made by restaurants are subject to the sales tax. The sales tax shall apply to all sales of food and beverages which are packaged, prepared, sold as meals, or in a form which is normally consumed at or near the premises whether or not such food and beverages are actually consumed on the premises.

Sales through a grocery store, salad bar, bakery, or delicatessen and by restaurants, cafeterias, lunch counters, drive-ins, roadside ice cream and refreshment stands, fish and chip places, fried chicken places, pizzerias, food and drink concessions, or similar facilities, of meals, sandwiches, hamburgers, hot dogs, french fries, fried chicken, fish and chips, pizza, potato salad, cole slaw, popcorn, sundaes, cones and cups of ice creams, milk shakes, soft drinks, and similar ready to eat food and beverage items are taxable regardless of whether sold by such establishments for consumption on the premises or on a "take-out" or "to go" basis.

Any food that is cooked to the order of the purchaser, or that is cooked and maintained at or near the cooking temperature prior to sale, or prepared food shall be considered to be sold as a meal or for immediate consumption and shall be subject to the sales tax. In addition the sale of food furnished, prepared, or served for consumption at tables, chairs, or counters, or from trays, glasses, dishes, or other equipment provided by the retail merchant is subject to sales tax.

The sale of food sold through vending machines or by street vendors is also subject to sales tax. The sale of food or meals by caterers is subject to sales tax. The tax does not apply to charges for serving or delivering food or beverages furnished, prepared, or served for consumption at a location or on equipment provided by the retail merchant. However, this exclusion only applies if the charges for serving or delivery are stated separately from the price of the food or beverages when the purchaser pays the charges.

Restaurants and caterers may not accept exemption certificates from any customer or organization in lieu of collecting sales tax except where: (1) the customer or organization purchases food and beverages exclusively for resale; or (2) a not-for-profit organization purchases food and beverage for fund raising.

Sales tax must be collected on any unitary transaction. The amount shown on a single check is considered to be a single sale even though the food or beverage is consumed by more than one person. Payment by one person of items listed on more than one check is also a unitary transaction.

II. Purchases by Restaurants:

A. Exempt Purchases

All purchases by restaurants of tangible personal property to be resold are exempt from sales tax. This exemption shall apply to all types of food, beverages, and other tangible personal property which are to be sold at retail. The purchase of tangible personal property that will act directly on the food during preparation is exempt from sales tax. (For example, a fryer or broiler would be exempt. However, a refrigerator is taxable because it serves merely as an agent in the preservation of food and does not act directly on the food during preparation). Utilities used in the production of food may also be exempt. For more information on this exemption, contact the Indiana Department of Revenue, Compliance Division.

Transactions involving tangible personal property are exempt from sales tax if the property is used, consumed, or removed in the service or consumption of the food, and the property is made unusable for further food service or consumption after the

property's first use for food service or consumption. Items considered exempt include paper napkins, plastic silverware, paper and Styrofoam cups, plates, or bowls. Other items included would be paper place mats, paper tablecloths, and other "to go" containers. Items not exempt from the sale tax would be cloth napkins and tablecloths, reusable plates, glasses, or silverware.

B. Taxable Purchases


The purchase of reusable glasses, cups, plates, cleaning materials, fixtures, cash registers, containers, preparation and serving counters, or any other item which is not directly used in direct production of food or is not purchased for resale is subject to sales tax. All materials that have been purchased exempt from sales tax which are later used for a non-exempt purpose are subject to the use tax.

C. Wrapping Materials:

The purchase of wrapping materials may or may not be subject to tax depending on their use. Wrapping materials and containers used to preserve food are subject to tax because such materials are not to be resold and are not directly used in direct production of food. Other wrapping materials and containers could be exempt if purchased for the reasons described in subpart A. Exempt Purchases.

III. Restaurant Records

All restaurant owners and operators must be registered as retail merchants and must maintain accurate records for three (3) years plus the current year in order to report to the Department the correct amount of gross receipts. If any sales are claimed as exempt sales, the records must clearly reflect such, and the owner must be able to substantiate all exempt sales. Refer to IC 6-2.5-6-8 to determine the calculation of very small transactions and the applicability of a sampling method.



Kenneth L. Miller
Commissioner